



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, THURSDAY, JULY 11, 2002

No. 93

## Senate

(Legislative day of Wednesday, July 10, 2002)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, the Reverend Dr. David Jefferson, Sr., Metropolitan Baptist Church, Newark, NJ.

### PRAYER

The guest Chaplain offered the following prayer:

Eternal and all wise God, we assemble this morning thanking You for this opportunity that You have given us. We thank You for the abundance of Your grace, for the extension of Your mercy, and the assurance of Your protection. Help these Senators to be faithful to the higher ideals of justice, liberty, and righteousness. Speak to their collective consciousness as they endeavor to make our Nation, and, yes, even the world, a house of hope, love, and peace.

Gracious Master, hold Your ideals over the women and men of this governing body. Place a crown of righteousness above them, and encourage them to grow tall enough to wear it. Your sacred scripture says that without a vision, the people will perish. Give the Senators a vision for America—a vision that will enable this country to be a responsible citizen of the world.

Now, Lord, grant unto these Senators the courage to lead this Nation in complex and confusing times. Help them to rely on that which is greater than themselves. May they be guided by Your Spirit and Your intelligence as they seek to establish the laws of this land. Bless us all. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 11, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

### ORDER OF PROCEDURE

Mr. REID. Madam President, the Senator from New Jersey wishes to make a few remarks relative to the guest Chaplain. I ask unanimous consent that following my very brief statement, the Senator from New Jersey be recognized for up to 3 minutes and that time not count against the morning business time this morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### SCHEDULE

Mr. REID. Madam President, the Senate will be in a period for morning business until 10:30 this morning. As the Chair will announce shortly, the first half of the time is under the control of the Republican leader. The Senator from Maine is here to use the first 15 minutes. She has been courteous in allowing the Senator from New Jersey to precede her. Following her time, the second half hour will be under the control of the Democratic leader or his designee.

At 10:30 a.m., we will be back on the accounting reform bill, with 90 minutes of debate prior to a vote in relation to the McConnell amendment. The first 45 minutes of that time will be under the control of Senator BYRD, and the second 45 minutes will be under the control of Senator MCCONNELL, the offerer of the amendment to be voted upon at noon today.

Cloture was filed on the accounting reform bill. Therefore, all first-degree amendments must be filed prior to 1 p.m.

Madam President, I have spoken with the majority leader today. He intends to finish this bill. We will have a vote on cloture tomorrow. So tomorrow could be a day with some votes. If anyone is planning on leaving early, they should understand there could be some votes tomorrow. We have 30 hours after that cloture motion vote has taken place. The leader has indicated he is going to finish the bill. Senators should be aware.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

### THE GUEST CHAPLAIN

Mr. CORZINE. Madam President, I thank the Senator from Maine for her courtesy in allowing me the opportunity to say a few words about my

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S6597

friend and minister who led us in prayer this morning.

I say to my colleagues in the Senate, it is an honor that we were able to have Rev. David Jefferson from the Metropolitan Baptist Church in Newark with us today. I assure my colleagues, from my own life experience, this is a remarkable man of tremendous energy, leadership, and moral character. He leads the largest Baptist church, a very dynamic community of believers, in Newark, NJ. Not only are they active in their religious life, but they make an enormous contribution to redevelopment and the support of the community, reaching out to all who are part of the community who sometimes have been left behind. Through their example, they are demonstrating that access to the American promise is true for everyone.

In his spare time, he is a senior executive at AT&T where he brings both great skills as a business person and moral character and leadership to his efforts in the business world. We need examples of people who are able to both recognize that our free enterprise system needs to be strong and powerful and have brilliant people who care about producing good services, good products at the right price but on an honorable basis. Reverend Jefferson is one who I think demonstrates we can do that, and he does it with great grace.

Most importantly, he is a moral leader for a broader community by demonstrating with all aspects of his life how important it is to recognize that we all live under a greater power than what I think we sometimes think we live under in our own lives. Sometimes we are too focused on what we are about, and he is a great teacher about the importance that we are one nation under God.

I am honored and privileged he has joined us today. I am honored and privileged that he is my friend. I thank the Presiding Officer for the opportunity to welcome Rev. David Jefferson to the Senate Chamber.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the Republican leader or his designee.

The Senator from Maine.

Ms. COLLINS. I thank the Chair. Madam President, I ask unanimous consent that I be permitted to proceed for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### LAPSES IN CORPORATE RESPONSIBILITY

Ms. COLLINS. Madam President, as every Member of this Chamber knows and, more importantly, as every American investor knows, we have recently witnessed lapses in corporate responsibility unlike anything that has occurred during the past 70 years. It is our role to determine why this has happened and what can be done to prevent it from continuing to happen. I rise to offer some thoughts, as well as to lend my support, to the accounting reform legislation now on the Senate floor.

Several years ago, Federal Reserve Chairman Alan Greenspan characterized the latter stages of the great bull market of the 1990s as irrational exuberance. Although stock prices rose for a few years after that statement, they ultimately collided with economic reality and embarked upon an extended decline. It now appears that that irrational exuberance was being sustained in some instances by improper accounting. Put differently, one way of satisfying the insatiable appetite of some for ever-increasing corporate profits, as well as for rich compensation packages, was to cook the books. Many, although not all, of the recent alleged abuses have occurred in what has been the hot sectors of our economy.

Electric deregulation, the development of the Internet, new medical treatments, and the spread of broadband are all thought to hold enormous prospect for future growth. Unfortunately, for some of the companies in those areas the growth in accounting creativity outstripped the growth in business fundamentals. I make this point because I think it contains a lesson for those of us in Congress, as well as for Federal and State regulators.

During my years as a financial regulator in my home State of Maine, the advice we gave to investors, to the point where it began to sound like a broken record, was that if it seems too good to be true, it almost certainly is. The comparable message for those of us with oversight responsibility is that if one is not vigilant during the boom, when things seem too good to be true, cleaning up after the bust will be far more difficult.

During my first 4 years in the Senate, I was privileged to serve as the chairman of the Senate Permanent Subcommittee on Investigations. During that time, I held more investigations into fraud and abuse in our securities markets than on any other subject, despite the fact we were in the midst of a roaring bull market. Indeed, the roaring bull market made those investigations seem all the more necessary.

More recently, Senator LEVIN and I teamed up in an investigation of Enron

Corporation, an investigation that is ongoing. In fact, we just released our first report on the failures of the Enron board of directors to exercise its fiduciary responsibilities. We found that too many of the Enron directors acted as rubber stamps rather than as watchdogs.

In short, the principal lesson of recent events for those of us in Congress may be the need to remember the importance of vigorous oversight and tough enforcement during the good times as well as the bad.

Let me now turn my attention to the conflicts of interest faced by some accountants, brokers, and corporate directors. American capitalism relies heavily on the fiduciary duty concept to protect those who entrust their money to large and often distant corporations. Accountants have a duty to investors to ensure the accuracy of financial statements. Directors have a duty to make certain that managers act in the best interest of the corporation, and stockholders have a duty to give advice that will best serve their client's needs. I believe that this structure is fundamentally sound, but I also believe we have allowed these trust relationships to be seriously eroded by conflicts of interest.

Confidence in our capital markets depends upon accurate and fair financial statements. To achieve that objective, we follow a maxim that President Reagan put forth in another context; namely, "trust but verify." We trust corporate managers to give us honest financial statements but, just in case, we look to accountants to verify the numbers. Too often in the recent past accountants have let us down, principally because, in my view, conflicts of interest have undermined their fundamental fiduciary duty to investors. The source of this problem is that some accountants can depend on those whose books they examine not only for their auditing jobs but much more worrisome for lucrative consulting contracts.

In some ways, the situation for brokers can be even worse, because they frequently have a personal, as well as an institutional, relationship with those to whom they owe a duty. As the recent Merrill Lynch settlement demonstrated, when the same individuals are involved in giving advice to retail customers and securing underwriting business from the corporations they are supposed to be objectively rating, it is the investor who losses. Again, the fiduciary duty concept is not inherently flawed. Rather, it has been eroded by conflicting interests that cannot comfortably coexist.

The third component of what might be called the fiduciary duty triad is the corporate board. Frequently owing their positions to those whose activities they are to monitor, some board members suffer from the appearance, and in some cases the reality, of conflicts of interest. In my view, given